

REMARKS

This is a full and timely response to the final Office Action of July 1, 2008, and Advisory Action of November 10, 2008. Upon entry of this paper, claims 1-5 and 10-16 remain pending in this application. Reexamination, reconsideration, and allowance of the application and all presently pending claims are respectfully requested.

Response to Double Patenting Rejections

The outstanding Advisory Action indicates that the claims of the instant application are rejected under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over the claims of U.S. Patent No. 7,387,240. Submitted herewith is a terminal disclaimer pertaining to U.S. Patent No. 7,387,240, and Applicant, therefore, requests that the double patenting rejections be withdrawn. See M.P.E.P. §804.02.

In filing the terminal disclaimer, Applicant relies upon the rulings of the Federal Circuit that the filing of such a terminal disclaimer does not act as an admission, acquiescence or estoppel on the merits of the obviousness issue. "In legal principle, the filing of a terminal disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither presumption nor estoppel on the merits of the rejection." *Quad Environmental Tech. v. Union Sanitary Dist.*, 946 F.2d 870, 874 (Fed. Cir. 1991); *Ortho Pharmaceutical Corp. v. Smith*, 959 F.2d 936, 941-942 (Fed. Cir. 1992).


CONCLUSION

Applicant respectfully requests that all outstanding objections and rejections be withdrawn and that this application and all presently pending claims be allowed to issue. If the Examiner has any questions or comments regarding Applicant's response, the Examiner is encouraged to telephone Applicant's undersigned counsel.

Respectfully submitted,

**THOMAS, KAYDEN, HORSTEMEYER
& RISLEY, L.L.P.**

By:


Jon E. Holland
Reg. No. 41,077

600 Galleria Parkway
15th Floor
Atlanta, Georgia 30339-5994
(256) 704-3900 Ext. 103